
SECOND SUBSTITUTE SENATE BILL 5912

State of Washington

57th Legislature

2001 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Fraser, Morton, Regala, Patterson, Oke, Kohl-Welles and Haugen)

READ FIRST TIME 03/08/01.

1 AN ACT Relating to energy facilities; amending RCW 80.50.020,
2 80.50.030, 80.50.040, 80.50.060, 80.50.090, 80.50.100, and 80.50.110;
3 and adding a new section to chapter 80.50 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 80.50.020 and 1995 c 69 s 1 are each amended to read
6 as follows:

7 The definitions in this section apply throughout this chapter
8 unless the context clearly requires otherwise.

9 (1) "Applicant" means any person who makes application for a site
10 certification pursuant to the provisions of this chapter((+)).

11 (2) "Application" means any request for approval of a particular
12 site or sites filed in accordance with the procedures established
13 pursuant to this chapter, unless the context otherwise requires((+)).

14 (3) "Person" means an individual, partnership, joint venture,
15 private or public corporation, association, firm, public service
16 company, political subdivision, municipal corporation, government
17 agency, public utility district, or any other entity, public or
18 private, however organized((+)).

1 (4) "Site" means any proposed or approved location of an energy
2 facility((+)).

3 (5) "Certification" means a binding agreement between an applicant
4 and the state which shall embody compliance to the siting guidelines,
5 in effect as of the date of certification, which have been adopted
6 pursuant to RCW 80.50.040 as now or hereafter amended as conditions to
7 be met prior to or concurrent with the construction or operation of any
8 energy facility((+)).

9 (6) "Associated facilities" means storage, transmission, handling,
10 or other related and supporting facilities connecting an energy plant
11 with the existing energy supply, processing, or distribution system,
12 including, but not limited to, communications, controls, mobilizing or
13 maintenance equipment, instrumentation, and other types of ancillary
14 transmission equipment, off-line storage or venting required for
15 efficient operation or safety of the transmission system and overhead,
16 and surface or subsurface lines of physical access for the inspection,
17 maintenance, and safe operations of the transmission facility and new
18 transmission lines constructed to operate at nominal voltages in excess
19 of 200,000 volts to connect a thermal power plant to the northwest
20 power grid: PROVIDED, That common carrier railroads or motor vehicles
21 shall not be included((+)).

22 (7) "Transmission facility" means any of the following together
23 with their associated facilities:

24 (a) Crude or refined petroleum or liquid petroleum product
25 transmission pipeline of the following dimensions: A pipeline larger
26 than six inches minimum inside diameter between valves for the
27 transmission of these products with a total length of at least fifteen
28 miles; or

29 (b) Natural gas, synthetic fuel gas, or liquified petroleum gas
30 transmission pipeline of the following dimensions: A pipeline larger
31 than fourteen inches minimum inside diameter between valves, for the
32 transmission of these products, with a total length of at least fifteen
33 miles for the purpose of delivering gas to a distribution facility,
34 except an interstate natural gas pipeline regulated by the United
35 States federal power commission((+)).

36 (8) "Independent consultants" means those persons who have no
37 financial interest in the applicant's proposals and who are retained by
38 the council to evaluate the applicant's proposals, supporting studies,
39 or to conduct additional studies((+)).

1 (9) "Thermal power plant" means, for the purpose of certification,
2 any electrical generating facility using any fuel, including nuclear
3 materials, for distribution of electricity by electric utilities((+)).

4 (10) "Energy facility" means an energy plant or transmission
5 facilities: PROVIDED, That the following are excluded from the
6 provisions of this chapter:

7 (a) Facilities for the extraction, conversion, transmission or
8 storage of water, other than water specifically consumed or discharged
9 by energy production or conversion for energy purposes; and

10 (b) Facilities operated by and for the armed services for military
11 purposes or by other federal authority for the national defense((+)).

12 (11) "Council" means the energy facility site evaluation council
13 created by RCW 80.50.030((+)).

14 (12) "Counsel for the environment" means an assistant attorney
15 general or a special assistant attorney general who shall represent the
16 public in accordance with RCW 80.50.080((+)).

17 (13) "Construction" means on-site improvements, excluding
18 exploratory work, which cost in excess of two hundred fifty thousand
19 dollars((+)).

20 (14) "Energy plant" means the following facilities together with
21 their associated facilities:

22 (a) Any stationary thermal power plant with generating capacity
23 ~~((of two))~~: (i) Of three hundred fifty thousand kilowatts or more,
24 measured using maximum continuous electric generating capacity, less
25 minimum auxiliary load, at average ambient temperature and pressure((
26 and)); and (ii) from one hundred thousand up to three hundred fifty
27 thousand kilowatts when alternative jurisdiction is sought under RCW
28 80.50.060;

29 (b) Floating thermal power plants of fifty thousand kilowatts or
30 more, including associated facilities;

31 ~~((b))~~ (c) Facilities which will have the capacity to receive
32 liquified natural gas in the equivalent of more than one hundred
33 million standard cubic feet of natural gas per day, which has been
34 transported over marine waters;

35 ~~((e))~~ (d) Facilities which will have the capacity to receive more
36 than an average of fifty thousand barrels per day of crude or refined
37 petroleum or liquified petroleum gas which has been or will be
38 transported over marine waters, except that the provisions of this

1 chapter shall not apply to storage facilities unless occasioned by such
2 new facility construction;

3 ~~((d))~~ (e) Any underground reservoir for receipt and storage of
4 natural gas as defined in RCW 80.40.010 capable of delivering an
5 average of more than one hundred million standard cubic feet of natural
6 gas per day; ~~((and~~

7 ~~(e))~~ (f) Facilities capable of processing more than twenty-five
8 thousand barrels per day of petroleum into refined products; and

9 (g) Facilities that exclusively use renewable resources with a
10 generating capacity of at least one thousand kilowatts when alternative
11 jurisdiction is sought under RCW 80.50.060.

12 (15) "Land use plan" means a comprehensive plan or land use element
13 thereof adopted by a unit of local government pursuant to chapter~~((s))~~
14 35.63, 35A.63, ~~((or))~~ 36.70, or 36.70A RCW~~((r))~~.

15 (16) "Zoning ordinance" means an ordinance of a unit of local
16 government regulating the use of land and adopted pursuant to
17 chapter~~((s))~~ 35.63, 35A.63, ~~((or))~~ 36.70, or 36.70A RCW, or Article XI
18 of the state Constitution.

19 (17) "Renewable resource" means: (a) Wind; (b) solar energy; (c)
20 geothermal energy; (d) landfill gas; or (e) biomass energy based on
21 solid organic fuels from wood, forest, or field residues, or dedicated
22 energy crops that do not include wood pieces that have been treated
23 with chemical preservatives such as creosote, pentachlorophenol, or
24 copper-chrome-arsenic.

25 **Sec. 2.** RCW 80.50.030 and 1996 c 186 s 108 are each amended to
26 read as follows:

27 (1) There is created and established the energy facility site
28 evaluation council.

29 (2)(a) The ~~((chairman))~~ chair of the council shall be appointed by
30 the governor with the advice and consent of the senate, shall have a
31 vote on matters before the council, shall serve for a term coextensive
32 with the term of the governor, and is removable for cause. The
33 ~~((chairman))~~ chair may designate a member of the council to serve as
34 acting ~~((chairman))~~ chair in the event of the ~~((chairman's))~~ chair's
35 absence. The ~~((chairman))~~ chair is a "state employee" for the purposes
36 of chapter 42.52 RCW and shall receive a salary as determined under RCW
37 43.03.040. As applicable, when attending meetings of the council,
38 members may receive reimbursement for travel expenses in accordance

1 with RCW 43.03.050 and 43.03.060, and are eligible for compensation
2 under RCW 43.03.250.

3 (b) The (~~chairman~~) chair or a designee shall execute all official
4 documents, contracts, and other materials on behalf of the council.
5 The Washington state department of community, trade, and economic
6 development shall provide all administrative and staff support for the
7 council. The director of the department of community, trade, and
8 economic development has supervisory authority over the staff of the
9 council and shall employ such personnel as are necessary to implement
10 this chapter. Not more than three such employees may be exempt from
11 chapter 41.06 RCW.

12 (3) The council shall consist of the directors, administrators, or
13 their designees, of the following departments, agencies, commissions,
14 and committees or their statutory successors:

- 15 (a) Department of ecology;
- 16 (b) Department of fish and wildlife;
- 17 (c) (~~Department of health;~~
- 18 ~~(d) Military department;~~
- 19 ~~(e)~~) Department of community, trade, and economic development;
- 20 (~~(f)~~) (d) Utilities and transportation commission; and
- 21 (~~(g)~~) (e) Department of natural resources(~~(;~~
- 22 ~~(h) Department of agriculture;~~
- 23 ~~(i) Department of transportation)~~).

24 (4) The directors, administrators, or their designees, of the
25 following departments or their statutory successors, may participate as
26 councilmembers at their own discretion provided they elect to
27 participate no later than sixty days after the application is filed:

- 28 (a) Department of agriculture;
- 29 (b) Department of transportation;
- 30 (c) Military department; and
- 31 (d) Department of health.

32 (5) The appropriate county legislative authority of every county
33 wherein an application for a proposed site is filed shall appoint a
34 member or designee as a voting member to the council. The member or
35 designee so appointed shall sit with the council only at such times as
36 the council considers the proposed site for the county which he or she
37 represents, and such member or designee shall serve until there has
38 been a final acceptance or rejection of the proposed site.

1 ~~((+5))~~ (6) The city legislative authority of every city within
2 whose corporate limits an energy plant is proposed to be located shall
3 appoint a member or designee as a voting member to the council. The
4 member or designee so appointed shall sit with the council only at such
5 times as the council considers the proposed site for the city which he
6 or she represents, and such member or designee shall serve until there
7 has been a final acceptance or rejection of the proposed site.

8 ~~((+6))~~ (7) For any port district wherein an application for a
9 proposed port facility is filed subject to this chapter, the port
10 district shall appoint a member or designee as a nonvoting member to
11 the council. The member or designee so appointed shall sit with the
12 council only at such times as the council considers the proposed site
13 for the port district which he or she represents, and such member or
14 designee shall serve until there has been a final acceptance or
15 rejection of the proposed site. The provisions of this subsection
16 shall not apply if the port district is the applicant, either singly or
17 in partnership or association with any other person.

18 **Sec. 3.** RCW 80.50.040 and 1990 c 12 s 4 are each amended to read
19 as follows:

20 The council shall have the following powers:

21 (1) To adopt, promulgate, amend, or rescind suitable rules and
22 regulations, pursuant to chapter 34.05 RCW, to carry out the provisions
23 of this chapter, and the policies and practices of the council in
24 connection therewith;

25 (2) To adopt rules concerning time limits for any action required
26 or authorized by this chapter;

27 (3) To develop and apply environmental and ecological guidelines in
28 relation to the type, design, location, construction, and operational
29 conditions of certification of energy facilities subject to this
30 chapter;

31 ~~((+3))~~ (4) To establish rules of practice for the conduct of
32 public hearings pursuant to the provisions of the Administrative
33 Procedure Act, as found in chapter 34.05 RCW;

34 ~~((+4))~~ (5) To prescribe the form, content, and necessary
35 supporting documentation for site certification;

36 ~~((+5))~~ (6) To receive applications for energy facility locations
37 and to investigate the sufficiency thereof;

1 (~~(6)~~) (7) To make and contract, when applicable, for independent
2 studies of sites proposed by the applicant;

3 (~~(7)~~) (8) To conduct hearings on the proposed location of the
4 energy facilities;

5 (~~(8)~~) (9) To prepare written reports to the governor which shall
6 include: (a) A statement indicating whether the application is in
7 compliance with the council's guidelines, (b) criteria specific to the
8 site and transmission line routing, (c) a council recommendation as to
9 the disposition of the application, and (d) a draft certification
10 agreement when the council recommends approval of the application;

11 (~~(9)~~) (10) To prescribe the means for monitoring of the effects
12 arising from the construction and the operation of energy facilities to
13 assure continued compliance with terms of certification and/or permits
14 issued by the council pursuant to chapter 90.48 RCW or subsection
15 (~~(12)~~) (13) of this section: PROVIDED, That any on-site inspection
16 required by the council shall be performed by other state agencies
17 pursuant to interagency agreement: PROVIDED FURTHER, That the council
18 (~~shall~~) may retain authority for determining compliance relative to
19 monitoring;

20 (~~(10)~~) (11) To integrate its site evaluation activity with
21 activities of federal agencies having jurisdiction in such matters to
22 avoid unnecessary duplication;

23 (~~(11)~~) (12) To present state concerns and interests to other
24 states, regional organizations, and the federal government on the
25 location, construction, and operation of any energy facility which may
26 affect the environment, health, or safety of the citizens of the state
27 of Washington;

28 (~~(12)~~) (13) To issue permits in compliance with applicable
29 provisions of the federally approved state implementation plan adopted
30 in accordance with the Federal Clean Air Act, as now existing or
31 hereafter amended, for the new construction, reconstruction, or
32 enlargement or operation of energy facilities: PROVIDED, That such
33 permits shall become effective only if the governor approves an
34 application for certification and executes a certification agreement
35 pursuant to this chapter: AND PROVIDED FURTHER, That all such permits
36 be conditioned upon compliance with all provisions of the federally
37 approved state implementation plan which apply to energy facilities
38 covered within the provisions of this chapter; and

1 (~~(13)~~) (14) To serve as an interagency coordinating body for
2 energy-related issues.

3 **Sec. 4.** RCW 80.50.060 and 1977 ex.s. c 371 s 5 are each amended to
4 read as follows:

5 (1) The provisions of this chapter shall apply to the construction
6 of energy facilities which includes the new construction of energy
7 facilities and the reconstruction or enlargement of existing energy
8 facilities where the net increase in physical capacity or dimensions
9 resulting from such reconstruction or enlargement meets or exceeds
10 those capacities or dimensions set forth in RCW 80.50.020 (7) and
11 (~~(17), as now or hereafter amended~~) (14). No construction of such
12 energy facilities may be undertaken, except as otherwise provided in
13 this chapter, after July 15, 1977, without first obtaining
14 certification in the manner provided in this chapter.

15 (2) The provisions of this chapter shall not apply to normal
16 maintenance and repairs which do not increase the capacity or
17 dimensions beyond those set forth in RCW 80.50.020 (7) and (~~(17), as~~
18 ~~now or hereafter amended~~) (14).

19 (3) Applications for certification of energy facilities made prior
20 to July 15, 1977 shall continue to be governed by the applicable
21 provisions of law in effect on the day immediately preceding July 15,
22 1977 with the exceptions of RCW 80.50.190 and 80.50.071 which shall
23 apply to such prior applications and to site certifications
24 prospectively from July 15, 1977.

25 (4) Applications for certification shall be upon forms prescribed
26 by the council and shall be supported by such information and technical
27 studies as the council may require.

28 (5) As an alternative to any other process required by state or
29 local law, applicants may elect to use the siting process established
30 in this chapter for the siting of stationary thermal power plants and
31 energy facilities that exclusively use renewable resources with
32 generating capacities from less than three hundred fifty thousand to
33 one hundred thousand kilowatts. In addition, applicants may elect to
34 use the siting process established in this chapter for energy
35 facilities that exclusively use renewable resources with a generating
36 capacity from less than one hundred thousand to one thousand kilowatts.

1 **Sec. 5.** RCW 80.50.090 and 1989 c 175 s 173 are each amended to
2 read as follows:

3 (1) The council shall conduct a public hearing in the county of the
4 proposed site (~~((within sixty days of))~~) as soon as practicable after
5 receipt of an application for site certification: PROVIDED, That the
6 place of such public hearing shall be as close as practical to the
7 proposed site.

8 (2) The council (~~((must))~~) shall conduct a public hearing to
9 determine (~~((at the initial public hearing))~~) whether or not the proposed
10 site is consistent and in compliance with city, county, or regional
11 land use plans or zoning ordinances and other applicable state and
12 local siting standards. If it is determined that the proposed site
13 does conform with existing land use plans or zoning ordinances in
14 effect as of the date of the application, the county or regional
15 planning authority shall not thereafter change such land use plans or
16 zoning ordinances so as to affect the proposed site.

17 (3) Prior to the issuance of a council recommendation to the
18 governor under RCW 80.50.100 a public hearing, conducted as an
19 adjudicative proceeding under chapter 34.05 RCW, the Administrative
20 Procedure Act, shall be held. At such public hearing any person shall
21 be entitled to be heard in support of or in opposition to the
22 application for certification.

23 (4) Additional public hearings shall be held as deemed appropriate
24 by the council in the exercise of its functions under this chapter.

25 **Sec. 6.** RCW 80.50.100 and 1989 c 175 s 174 are each amended to
26 read as follows:

27 (1)(a) The council shall report to the governor its recommendations
28 as to the approval or rejection of an application for certification
29 within (~~((twelve))~~) nine months of receipt by the council of such an
30 application, or such later time as is mutually agreed by the council
31 and the applicant. Pursuant to RCW 34.05.476, the council's report to
32 the governor shall be based on the administrative record developed
33 during the public hearing held under RCW 80.50.090(3), along with the
34 environmental impact statement prepared under RCW 43.21C.030, and
35 relevant information presented at other public hearings held by the
36 council under this chapter. If the council recommends approval of an
37 application for certification, it shall also submit a draft
38 certification agreement with the report. The council shall include

1 conditions in the draft certification agreement to implement the
2 provisions of this chapter(~~(, including, but not limited to, conditions~~
3 ~~to protect state or local governmental or community interests affected~~
4 ~~by the construction or operation of the energy facility, and conditions~~
5 ~~designed to recognize the purpose of laws or ordinances, or rules or~~
6 ~~regulations promulgated thereunder, that are preempted or superseded~~
7 ~~pursuant to RCW 80.50.110 as now or hereafter amended)). Any condition
8 that constitutes a variance to an otherwise applicable state or local
9 standard must be based on a finding that the variance will adequately
10 protect against the harm sought to be prevented by the state or local
11 standard being varied.~~

12 (b) If a draft certification recommends the use of public property,
13 the council's report to the governor shall state the views of state
14 agencies or local governments with authority over the public property.

15 (2) Within (~~sixty~~) thirty days of receipt of the council's report
16 the governor shall take one of the following actions:

17 (a) Approve the application and execute the draft certification
18 agreement; or

19 (b) Reject the application; or

20 (c) Direct the council to reconsider certain aspects of the draft
21 certification agreement.

22 The council shall reconsider such aspects of the draft
23 certification agreement by reviewing the existing record of the
24 application or, as necessary, by reopening the adjudicative proceeding
25 for the purposes of receiving additional evidence. Such
26 reconsideration shall be conducted expeditiously. The council shall
27 resubmit the draft certification to the governor incorporating any
28 amendments deemed necessary upon reconsideration within forty-five days
29 of receipt of such direction for reconsideration. Within (~~sixty~~)
30 thirty days of receipt of such draft certification agreement, the
31 governor shall either approve the application and execute the
32 certification agreement or reject the application. The certification
33 agreement shall be binding upon execution by the governor and the
34 applicant.

35 (3) The rejection of an application for certification by the
36 governor shall be final as to that application but shall not preclude
37 submission of a subsequent application for the same site on the basis
38 of changed conditions or new information.

1 NEW SECTION. **Sec. 7.** A new section is added to chapter 80.50 RCW
2 to read as follows:

3 (1) No city or county comprehensive plan or zoning ordinance may
4 preclude the siting of energy facilities.

5 (2) The council may adopt standards by rule to guide cities and
6 counties in determining whether a particular comprehensive plan or
7 zoning ordinance provision may have a preclusionary effect on the
8 siting of one or more types of energy facilities.

9 **Sec. 8.** RCW 80.50.110 and 1975-'76 2nd ex.s. c 108 s 37 are each
10 amended to read as follows:

11 (1) If any provision of this chapter is in conflict with any other
12 provision, limitation, or restriction which is now in effect under any
13 other law of this state, or any rule or regulation promulgated
14 thereunder, this chapter shall govern and control and such other law or
15 rule or regulation promulgated thereunder shall be deemed superseded
16 for the purposes of this chapter.

17 (2) Except as provided in subsection (3) of this section, the state
18 hereby preempts the regulation and certification of the location,
19 construction, and operational conditions of certification of the energy
20 facilities included under RCW 80.50.060 as now or hereafter amended.

21 (3) Nothing in this section shall be construed to preempt the
22 authority of state agencies or local governments regarding the
23 management or use of public property proposed for the siting of energy
24 facilities.

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